



FRPA GENERAL BULLETIN

Number 20

Updated February 3rd, 2012

Declaration regarding free growing obligations met to the extent practicable under *Forest Planning and Practices Regulation* (FPPR) Section 97.1.

The information contained in this bulletin does not constitute legal advice. Practitioners outside government should seek independent legal advice.

Introduction

The purpose of this bulletin is to provide information and advice to Delegated Decision Makers¹ (DDM) and forest professionals for their consideration when submitting or reviewing free growing declarations made under FPPR s 97.1.

Declaration regarding free growing stand obligations met to the extent practicable

If a stocking standard requirement is not achieved but the obligation holder considers that the obligation has been met to the extent that is practicable they may submit a free growing declaration to the District Manager. Declarations under FPPR s 97.1 may be made without amending the applicable stocking standards for the area.

FPPR s 97.1 is intended for those situations where:

- due to circumstances unforeseeable at the time of prescription development, or
- despite the use of reasonable management practices to address an issue that was identified at the time of prescription development,

the obligation cannot be achieved in the required timeframe through the implementation of a practicable treatment. It is intended to apply in those situations where the anticipated outcome of any proposed treatment or repeated effort would not significantly alter the current state of the opening or improve the ability of the stand to achieve the obligation.

If either omissions of information considered during original prescription development or poor implementation of previously prescribed forest management practices have led to the situation where the achievement of the original stocking standard is not practicable

¹ The Minister has delegated his authority to District Managers for the purposes of making determinations and issuing orders under s 97.1(3) and (4).

then the obligation holder should consider amending the stocking standard under, as applicable, FPPR s 46.2, FPC s 35 or FPC s 36 and not declare under FPPR s 97.1.

Application

Declarations under FPPR 97.1 may be made for obligations under

- *Forest and Range Practices Act (FRPA) section 29,*
 - *FPPR s 44 – free growing stands generally,*
 - *FPPR s 46.1 – free growing stands:- community salvage licences,*
 - *FPPR s 46.2(5) – establish free growing stand on area that previously did not achieve standard*
- Part 11 of FRPA for *Forest Practices Code of BC Act (FPC)*
 - *FPC s 69.1 – site plans under an Forest Development Plan (FDP)*
 - *FPC s 70 – silviculture prescriptions*
- *Forest Planning and Practices Regulation*
 - *FPPR s 46 (1) – Forestry Licence to Cut*
 - *FPPR s 111 (4) – amalgamating obligations*

Declarations under FPPR 97.1 are not possible for obligations under

- *FRPA section 29,*
 - *FPPR s 45 – Free growing stands collectively across cutblocks (generally known as “multi-block”)*

Natural events as described in FPPR s 96 (wildfire, an outbreak of *Dothistroma* in a lodgepole pine plantation, if the plantation was established before July 31, 2006, or a landslide, or a flood, that makes it impossible to establish a Free growing stand within 20 years of the commencement date) should be considered for relief or compensation under FRPA s 108 prior to consideration for declaration under FPPR s 97.1.

Information to be submitted with the declaration

The declaration must be signed by the holder or person authorized by the holder and contains the following information:

1. The area that the FPPR s 97.1 declaration applies to. For example, sufficient information such that the DDM is clear which specific area(s) the declaration applies to,
2. A statement as to the extent the standard has not been met including a description of the specific elements of the applicable standard that have not been met. For example, a description of the current stocking level in comparison to the target and minimum stocking level specified as part of the standard,
3. A rationale explaining why it is not practicable to fully meet the obligation and the associated elements of the standard given the specific situation or circumstance, and,

4. The date on which the declaration is made.

Declarations under FPPR s 97.1 are to be submitted by authorized individuals through RESULTS as per the current declaration procedures under FRPA s 107 and specified in the [RESULTS Information Submission Specification \(licensee submissions\)](#) document. The DDM is not obligated to review every single declaration under this section.

Practicable

Section 97.1 of FPPR uses the term ‘practicable.’ This term is sometimes confused with the term ‘practical.’

“Practical” usually refers to usefulness or to whether it is sensible to do something, whereas “practicable” refers to the ability or feasibility of doing something. Although it may not be practical (useful or sensible) from the holder’s standpoint to meet its obligations; it may nevertheless be practicable (feasible) to do so.

For further information on “practicable” please refer FRPA general bulletin #3 [Use of the Term "Practicable" Under the Forest and Range Practices Act \(FRPA\) and Regulations](#)

Rejection

Under FPPR s 97.1 (3) the DDM may reject a declaration within 15 months after receiving a declaration, and after giving the holder of the obligation an opportunity to be heard, the DDM can issue an order determining

- that the obligation has not been fulfilled on the area to the extent practicable or
- that the obligation holder made a material misrepresentation or misstatement of fact in the declaration related to the obligation or omitted information from the declaration that the person knew or ought to have known was material to determining whether the obligation had been fulfilled to the extent practicable.

An order cannot be issued unless the DDM first determines that, given the circumstances and conditions applicable to the area covered by the declaration, the obligation has not been met to the extent practicable and that it is in the public interest for the obligation holder to fully meet the obligation, having regard to the extra expense that will be incurred by the holder. In other words, that it was not feasible, given the circumstances and conditions applicable to the declaration area, to fulfill the obligation. In making this determination, the DDM may consider the holder’s performance on the area, as well as the physical conditions of the area.

Next, the DDM must weigh the public benefit of fulfilling the obligation against the expenses to the holder of doing so. In other words, determine whether it would be useful or makes sense from a public standpoint to have the obligation fulfilled, in light of the expenses the holder will have to incur in fulfilling it. In making this determination, the DDM may consider the general impacts of non-fulfillment on the future timber supply of the area, among other public benefits, including economic, social and environmental benefits to continue to pursue fulfillment of the obligation.

If an order is issued rejecting the declaration, the holder remains responsible for establishing a free growing stand on the area. The DDM must provide reasons for the determination with the notice of the order to the holder.

Professional reliance

Although a forest professional prepares the declaration under FPPR s 97.1 it is the obligation holder that ultimately makes the declaration.

Professional Foresters are bound by the Foresters Act and the ABCFP's bylaws. These govern codes of conduct and standard of practice, including a Code of Ethics. The Association advocates and upholds the principles of good forest stewardship.

While one of the professional responsibilities is to ensure the obligation holder is able to meet their statutory obligations, there is also an expectation that the forest professional will promote stewardship principles through the use of the "best" or "most appropriate" practice or decision.

In making the decision to utilize FPPR s 97.1 or not, the forest professional must consider the interests of the public, the interest of their employer, the impact on forest resources, and the impact on the profession. If the professional finds a conflict between any of these, the difference must be resolved.

More information on professional reliance can be found at <http://www.asttbc.org/practice/docs/PRTaskForceReport.pdf>.

Contacts:

If there are any questions about this bulletin, please contact:

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OPERATIONS DIVISION

MEMORANDUM

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VIA EMAIL

To: Regional Executive Directors
District Managers
Branch Directors

From: T.P. (Phil) Zacharatos, R.P.F.
A/Assistant Deputy Minister
Operations Division

Re: **FRPA General Bulletin (Number 20) Declaration regarding free growing obligations met to the extent practicable under *Forest Planning and Practices Regulation (FPPR) Section 97.1***



A new *Forest and Range Practices Act* General Bulletin (Number 20), "Declaration regarding free growing obligations met to the extent practicable under *Forest Planning and Practices Regulation (FPPR) Section 97.1*" has just been completed. This bulletin provides information and advice to district managers and forest professionals for their consideration when, for example:

- Submitting or reviewing free growing declarations made under FPPR s 97.1.

Electronic copies will be available soon from the Provincial FRPA Implementation Team's website at the following address: <http://www.for.gov.bc.ca/rco/pfit/index.htm>.

If you have any questions about this bulletin, please contact Allan Powelson, Forest Establishment Initiatives Officer, Forest Practices Branch, Ministry of Forests and Range at (250) 812-5054, or by email at, Allan.Powelson@gov.bc.ca.

T.P. (Phil) Zacharatos, R.P.F.
A/Assistant Deputy Minister
Operations Division

Attachment: 1

All Regional Executive Directors
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